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### International Legal Education and Specialist Certification [Year in Review]

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# THE YEAR IN REVIEW

AN ANNUAL SURVEY OF INTERNATIONAL LEGAL DEVELOPMENTS AND  
PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

2017 • VOLUME 51

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## **International Legal Education and Specialist Certification**

MARISSA MORAN, DIANE PENNEYS EDELMAN, AND RICHARD PELTZ-STEELE\*

The American Bar Association (ABA) promulgates rules and regulations that apply to all United States law schools with ABA-accreditation and approval. Those rules apply specifically to schools offering programs leading to a J.D. degree. In August 2016, the ABA Council approved certain changes to the *ABA Standards and Rules of Procedure for Approval of Law Schools*, which became effective on August 9, 2016.<sup>1</sup> The changes affected not only J.D. programs, but also study abroad programs offered by ABA member schools.

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1. See generally, *The Law School Accreditation Process*, AMERICAN BAR ASSOC. SECTION ON LEGAL ED. AND ADMISSION TO THE BAR, Sept. 2016, [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/2016\\_accreditation\\_brochure\\_final.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2016_accreditation_brochure_final.authcheckdam.pdf). The United States Department of Education recognizes the Council and Accreditation Committee of this Section as the parties responsible for accrediting J.D. programs.

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## **I. Amendments to American Bar Association Criteria Relating to Foreign Programs<sup>2</sup>**

Although regulatory authorities outside the United States may regulate programs within their boundaries, the ABA's Section on Legal Education and Admission to the Bar promulgates criteria regulating the types of international programs offered by United States law schools. Different sets of regulations, or criteria, may apply to different types of programs.<sup>3</sup> For example, there are different criteria for Foreign Summer and Intersession Programs,<sup>4</sup> and for Foreign Semester and Year-Long Study Abroad Programs.<sup>5</sup> Yet another set of criteria govern study abroad for United States law students that do not fit into the above categories—the Criteria for Accepting Credit for Student Study at a Foreign Institution.<sup>6</sup>

Law schools seeking to add summer, intersession, semester, or year-long programs must timely complete and submit to the Section on Legal Education a detailed questionnaire.<sup>7</sup> Part VII of that questionnaire, entitled “Foreign Programs of the Annual Questionnaire,” requires schools to report about various aspects of these programs (as well as student study at a foreign institution).<sup>8</sup> In addition, both summer and intersession programs and semester and year-long programs may be subject to ABA site visits. As discussed below, however, regulation of programs may differ depending upon whether those programs are open to students of one United States law school or open to students from other schools as well.

### **A. SUMMER AND INTERSESSION PROGRAMS**

In the summer of 2016, the ABA amended the rules and procedures governing the award of academic credit at ABA-approved United States law schools for student work performed outside of the country, whether in an

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2. This Section was contributed by Richard Peltz-Steele and Diane Penneys Edelman. The Introduction was contributed by Professor Edelman.

3. *See id.*

4. *See Criteria for Foreign Summer and Intersession Programs Offered by ABA-Approved Law Schools in a Location Outside the United States*, THE A.B.A. STANDARDS AND RULES OF PROC. FOR THE APPROVAL OF L. SCH. (2017), [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2016\\_2017\\_criteria\\_foreign\\_summer\\_intersession\\_programs.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2016_2017_criteria_foreign_summer_intersession_programs.authcheckdam.pdf).

5. *See Criteria for Approval of Foreign Semester and Year-Long Study Abroad Programs Established by ABA-Approved Law Schools*, THE A.B.A. STANDARDS AND RULES OF PROC. FOR THE APPROVAL OF L. SCH. (2017), [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2016\\_2017\\_criteria\\_foreign\\_semester\\_yearlong\\_study\\_abroad.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2016_2017_criteria_foreign_semester_yearlong_study_abroad.authcheckdam.pdf).

6. *See Criteria for Accepting Credit for Student Study at a Foreign Institution*, THE A.B.A. STANDARDS AND RULES OF PROC. FOR THE APPROVAL OF L. SCH. (2017), [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2016\\_2017\\_criteria\\_accepting\\_credit\\_student\\_study\\_foreign\\_institution.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2016_2017_criteria_accepting_credit_student_study_foreign_institution.authcheckdam.pdf).

7. *See generally A.B.A. Questionnaires*, A.B.A.: SEC. OF LEGAL EDUC. AND ADMISSIONS TO THE B., [http://www.americanbar.org/groups/legal\\_education/resources/questionnaire.html](http://www.americanbar.org/groups/legal_education/resources/questionnaire.html).

8. *See id.*

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ABA school's foreign program or in the program of a foreign school. Effective August 9, 2016, the ABA's "Criteria for Foreign Summer and Intersession Programs Offered by ABA-Approved Law Schools in a Location Outside the United States"<sup>9</sup> replaced the ABA's "Criteria for Approval of Foreign Summer and Intersession Programs Established by ABA-Approved Law Schools."<sup>10</sup> The revision created a new distinction between foreign-study programs: "closed" programs and "open" programs.

Closed programs enroll only students from the sponsoring law school itself. On the other hand, open programs enroll students from other ABA-approved law schools or those co-sponsored by more than one ABA-approved law school. Under the revised criteria, closed programs are relieved of many of the administrative burdens of operating a foreign program. Closed programs are no longer compelled to pay an annual fee to the ABA, and no longer must run the gauntlet of a special approval process.<sup>11</sup> Instead, these programs are reviewed as part and parcel of the school's program of legal education in the ordinary course of annual and sabbatical review.<sup>12</sup> Open programs, however, remain subject to a special approval process. Open programs require prior approval, payment of a \$1,900 annual fee to the ABA, and a site visit during the second year of operation.<sup>13</sup>

Open programs, but not closed programs, must have a full-time faculty member and program director (which may be the same person) on site for the duration of the program.<sup>14</sup> Additional terms pertain to faculty qualifications and student access to faculty.<sup>15</sup> In an open program, the criteria require that the program substantially relate to the socio-legal environment of the host country, or that the program have has an

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9. *Criteria for Foreign Summer and Intersession Programs Offered by ABA-Approved Law Schools in a Location Outside the United States*, A.B.A. STANDARDS AND RULES OF PROC. FOR APPROVAL OF L. SCH. (2017), at 89–96, [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2016\\_2017\\_criteria\\_foreign\\_summer\\_intersession\\_programs.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2016_2017_criteria_foreign_summer_intersession_programs.pdf) (hereinafter referred to as "Revised Criteria").

10. *Criteria for Approval of Foreign Summer and Intersession Programs Established by ABA-Approved Law Schools*, A.B.A. STANDARDS AND RULES OF PROC. FOR APPROVAL OF L. SCH. (2016), at 145–52, [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2015\\_2016\\_foreign\\_summer\\_intersession\\_programs.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2015_2016_foreign_summer_intersession_programs.pdf) [hereinafter "Original Criteria"].

11. See Revised Criteria, *supra* note 9, at 89–92.

12. See *id.* at 93–94.

13. *Id.* at 92–95; Memorandum from Barry A. Currier, ABA Managing Director of Accreditation and Legal Education, to Interested Persons and Entities 8 (Aug. 31, 2016), [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/20160831\\_no\\_tice\\_revisions\\_standards\\_foreign\\_study\\_criteria.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/20160831_no_tice_revisions_standards_foreign_study_criteria.pdf) [hereinafter "Currier Memorandum"].

14. See Revised Criteria, *supra* note 9, at 92.

15. *Id.* at 93.

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international or comparative focus.<sup>16</sup> Open programs trigger the full range of approval procedures spelled out in the criteria.<sup>17</sup>

Relaxed oversight of closed programs is a function of the growth and success of foreign study. The ABA explained that the earliest foreign-study programs, a quarter century ago, required careful oversight to ensure quality while they pioneered in the field.<sup>18</sup> But a present abundance of program offerings means that there are successful models and deep experience on which new programs can draw, diminishing the need for close scrutiny.<sup>19</sup> Moreover, the ABA's recent focus on law school accountability in outcomes and assessments means that schools' full curricular programs, foreign study courses included, are subject to more rigorous analysis upon routine annual and sabbatical reviews.<sup>20</sup> The ABA noted that the annual questionnaire was recently revised to consolidate and update questions on foreign programs.<sup>21</sup> Both annual and site evaluation questionnaires will be upgraded to ensure review of a law school's foreign offerings to its own students, as well as its open programs.<sup>22</sup>

Although the same rationales for relaxed oversight might apply when a law school opens its programs to students from other schools, whether through open application or organized co-sponsorship, the ABA concluded that more careful oversight for open programs remains warranted.<sup>23</sup> ABA approval and specialized review provide quality assurance for law schools that award degree credit for a student's work in another law school's approved program.<sup>24</sup>

Both open and closed programs continue to be subject to the usual standards that pertain to a law school's curricular offerings, including the following: faculty must approve the courses, administrative and faculty staffing must be adequate, class preparation time must be adequate, and student evaluations must be collected and maintained.<sup>25</sup> In addition, no more than one and one-half (1.5) semester credit hours may be awarded for each week of the program, foreign-language instruction with consecutive rather than simultaneous English translation must be time-discounted by fifty percent, programs must incorporate at least two visits related to the socio-legal environment of the host country, and physical facilities must be adequate, with library resources made available if course materials are not self-contained.<sup>26</sup> In its commentary, the ABA emphasized that all foreign-study programs must continue to disclose details of their workings, including

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16. *Id.*

17. *See id.* at 94–96.

18. Currier Memorandum, *supra* note 13, at 8.

19. *Id.*

20. *Id.*

21. *Id.* at 9.

22. *Id.*

23. *Id.*

24. Currier Memorandum, *supra* note 13, at 9.

25. Revised Criteria, *supra* note 9, at 89–92, 94.

26. *Id.* at 90–91.

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program cost and content, methods of student evaluation, faculty biographical information, housing cost and availability, refund and cancelation policies, and travel advisories.<sup>27</sup>

**B. STUDENT STUDY AT A FOREIGN INSTITUTION**

The revised ABA “Criteria for Accepting Credit for Student Study at a Foreign Institution” also came into effect August 9, 2016.<sup>28</sup> The revisions were technical in nature, bringing the criteria into accord with changes to the 2016–2017 *ABA Standards and Rules of Procedure for Approval of Law Schools*.<sup>29</sup> One revision deleted an outdated reference to the minutes-of-instruction calculation in Standard 304.<sup>30</sup> Another revision accommodated the move of field placements from Standard 305 to the experiential-focused Standard 304.<sup>31</sup>

Most important, the remaining portion of Part I(C)(2) of these criteria states that “[a] law school shall award credit consistent with the requirements of Standard 310 regarding the determination of credit hours for coursework, and should make reasonable efforts to determine appropriate comparability between the foreign course and the regular law school curriculum.”

In May 2016, the ABA modified Standard 310, “Determination of Credit Hours for Coursework,” and provided a guidance memo from the Managing Director on the topic.<sup>32</sup> This modification changed the method that sponsoring schools must use to award credits. Specifically, the Managing Director has explained:

In combination with new Standard 311, new Standard 310: (a) changes the requirement for determining the work required to earn a credit from minutes to hours; (b) restates the amount of time to include time for a final examination; and (c) adds the requirement that out-of-class work, in addition to in-class instruction time, be included in the calculation and determination of the work needed for a credit. Standard 311 mandates that schools require “not fewer than 83 credits [sic] hours” for graduation, with at least 64 credit hours earned in courses requiring attendance in regularly scheduled classroom sessions or direct

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27. Currier Memorandum, *supra* note 13, at 9; Revised Criteria, *supra* note 9, at 91–92.

28. *Criteria for Accepting Credit for Student Study at a Foreign Institution*, A.B.A. STANDARDS AND RULES OF PROC. FOR APPROVAL OF L. SCH. (2017), at 105–08, [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2016\\_2017\\_criteria\\_accepting\\_credit\\_student\\_study\\_foreign\\_institution.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2016_2017_criteria_accepting_credit_student_study_foreign_institution.pdf).

29. See generally *A.B.A. Standards*, A.B.A.: SEC. OF LEGAL EDUC. AND ADMISSIONS TO THE B., [http://www.americanbar.org/groups/legal\\_education/resources/standards.html](http://www.americanbar.org/groups/legal_education/resources/standards.html).

30. Currier Memorandum, *supra* note 13, at 8.

31. *Id.*

32. See *Managing Director’s Guidance Memo: Standard 310, May 2016*, A.B.A.: SEC. OF LEGAL EDUC. AND ADMISSIONS TO THE B. (May 2016), [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/governancedocuments/2016\\_standard\\_310\\_guidance\\_memorandum.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2016_standard_310_guidance_memorandum.authcheckdam.pdf).

faculty instruction. Standard 310 governs how schools determine the credit hours awarded for courses and other work undertaken by students. Standard 310 does two basic things: (1) it requires that schools “adopt, publish, and adhere to written policies and procedures for determining the credit hours that it awards for coursework,” and (2) it establishes the amount of student work (in class and out of class) schools must require in awarding academic credit.<sup>33</sup>

Law schools must also “adopt, publish, and adhere to written policies and procedures for determining the credit hours that it awards for coursework” and must consider student work both inside and outside of class when determining how to award academic credit.<sup>34</sup> Thus, law schools should evaluate their policies for granting credit earned abroad to comply with the revised criteria.

## **II. First-Year Courses That Focus on International or Comparative Law<sup>35</sup>**

Once offered only to upper-level law students, courses that focus entirely or partially on international and/or comparative law are increasingly being offered to first-year law students, either as electives or required courses. As of November 2016, nineteen United States law schools reported that they typically offer international or comparative law-oriented courses to first-year students.<sup>36</sup> Reporting schools named a combined twenty-four course offerings, seventeen of which are doctrinal courses and the remainder of which are legal skills-oriented.<sup>37</sup> The legal skills-oriented courses are sometimes required (e.g., in the Louisiana law schools,<sup>38</sup> and University of Detroit-Mercy’s joint degree program with the University of Windsor), and sometimes electives.<sup>39</sup> Although most courses are offered to first-year students in the spring, a few are fall term courses. The specific offerings include the following:

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33. *Id.*

34. *Id.*

35. This section was contributed by Diane Penneys Edelman.

36. This information is based on emails on file with contributing author, sent to members of the Legal Writing listserv (LRWPROF-L).

37. Typical doctrinal offerings are International (or Public International) Law or Comparative Law. Other offerings include International Business Transactions, Immigration Law, and Law and Society in Japan. This Article does not address offerings specifically designed for international students or students for whom English is a second language, many of which are listed on the website of the Legal Writing Institute’s resources for Teaching International Students. See generally *Teaching International Students*, LEGAL WRITING INST. (2017), [http://lwionline.org/teaching\\_international\\_students.html](http://lwionline.org/teaching_international_students.html).

38. Schools located in dual-jurisdiction Louisiana reported offerings of Western Legal Traditions: Louisiana Impact (Louisiana State), Civil Law Obligations (Louisiana State and Southern) and Civil Law Property (Louisiana State and Southern). These Louisiana law school courses are required parts of the first-year curriculum.

39. *E.g.*, University of Baltimore, Brooklyn, University of the Pacific, and Villanova.



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Institution	Course(s)	Type of 1L Course
American University	International Law	Spring elective
Arizona, University of	Intl Business Transactions	Spring elective
Arizona, University of	Immigration Law	Spring elective
Baltimore, University of	Comparative Law	Spring elective
Brooklyn	Legal Writing II	Legal Writing option—Spring
Detroit Mercy	Comparative Legal Research & Writing	Required first-year course for students enrolled in joint program with University of Windsor
Detroit Mercy	All 1L courses in Detroit-Mercy/Windsor dual degree program include comparative US/Canadian law components	Required first-year course for students enrolled in joint program with University of Windsor
<i>Drexel</i> (Thomas R. Kline School of Law)	International Law (offered occasionally)	Spring elective
Drexel (Thomas R. Kline School of Law)	International Human Rights Law (offered occasionally)	Spring elective
Louisiana State	Western Legal Traditions: Louisiana Impact (fall)	Required
<i>Louisiana State</i>	Civil Law Obligations (spring)	Required
Louisiana State	Civil Law Property (spring)	Required
Louisville	Lawyering Skills	Includes some British law in lawyering skills classes
Loyola – Los Angeles	Introduction to International Law	Spring elective
Minnesota, U. of	International Law	Spring elective
Nebraska College of Law	International Perspectives in the U.S. Legal System: Practicing Law in a Global Legal Environment	Required—spring term
Pacific, University of (McGeorge)	Global Lawyering Skills	Year-long research, writing, and skills; spring term course includes unit on international/comparative law

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Institution	Course(s)	Type of 1L Course
Pennsylvania, University of	Public International Law (frequently offered)	Spring elective
Pennsylvania, University of	Law and Society in Japan (frequently offered)	Spring elective
Penn State University – Dickinson Law	Practicing Law in a Global World: Contexts and Competencies	Required—Spring term
Southern	Civil Law Property	Required
Southern	Civil Law Obligations	Required
Southwestern	Public International Law	Spring elective
Stetson University College of Law	Research and Writing II - International Law	Persuasive legal writing—Spring
Villanova	International Advocacy	Legal Writing option—Spring
Villanova	Public International Law	Spring elective
Wisconsin, University of	International Law	Spring elective

The International Legal Education Committee plans to collect course syllabi during the coming year. Those interested in research in this area may also wish to review the numerous scholarly resources about “internationalizing” first-year law school courses.<sup>40</sup>

40. See, e.g., Diane Penneys Edelman, *A Global Approach to Legal Writing and Legal Research: An Evolutionary Process*, 5 DREXEL L. REV. 497 (2013); DeJarnatt & Rahdert, *Preparing for Globalized Law Practice: The Need to Include International and Comparative Law in the Legal Writing Curriculum*, 17 LEGAL WRITING 3 (2011); Sebok, *Using Comparative Torts Materials to Teach First-Year Torts*, 57 J. LEGAL ED. 562 (2007); Grossman, *Integrating International Law into the First-Year Curriculum*, 24 PENN STATE INT’L L. REV. 835 (2006); Madden, *Integrating Comparative Law Concepts into the First Year Curriculum: Torts*, 56 J. LEGAL ED. 560 (2006); Mirow, *Globalizing Property: Incorporating Comparative and International Law into First-Year Property Classes*, 54 J. LEGAL ED. 183 (2004); Schnably, *Integrating International Law into the First-Year Property Course*, 93 AM. SOC’Y INT’L L. PROC. 359 (1999).